

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CIVIL CASE NO. 3:08cv600

EUGENE T. HOLMES,

Plaintiff,

vs.

ELAINE F. MARSHALL, et al.,

Defendants.

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ORDER

THIS MATTER is before the Court on the Plaintiff's Amended Application to Proceed Without Prepayment of Fees and Affidavit, filed on January 5, 2009 [Doc. 4] and for a review of the Complaint pursuant to 28 U.S.C. § 1915(e)(2).

Upon review of the Plaintiff's Amended Application to Proceed Without Prepayment of Fees and Affidavit, the Court finds that the Plaintiff is unable to make prepayment of the fees or costs and that the Application should be allowed.

Pursuant to 28 U.S.C. § 1915(e)(2), the Court shall dismiss any case that "(i) is frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is

immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); see also Michau v. Charleston County, 434 F.3d 725, 728 (4th Cir. 2006) (“Under 28 U.S.C.A. § 1915(e), which governs IFP filings in addition to complaints filed by prisoners, a district court must dismiss an action the court finds to be frivolous or malicious or that fails to state a claim.”).

Upon careful review of the Complaint, the Court concludes that this action is frivolous. The Plaintiff seeks monetary relief against several defendants, including judges, prosecutors, and other court personnel, who have immunity from such actions. By way of example, Plaintiff’s allegations against named defendant Timothy L Patti, who the Court takes judicial notice is a duly elected Superior Court Judge for the state judicial district that includes Gaston County, read as follows:

Resident Judge Gaston County N.C. {96-CRS35259} - Refused to call subpoena, Refused to strike fraudulent record from Plaintiff Public permanent record. This case was the work of District Attorney Lands and Milo RedArrow has place fraudulent Document into the files of 1998 Judge Dennis winner case to frame Plaintiff Eugene T. Holmes {07CR 053072} Wilkes County N.C.

[Doc. 1 at 34] (capitalizations and syntax as in original). Judge Patti, who would have judicial immunity for any judicial act, is alleged to have refused to take certain judicial actions, but then others are identified as the persons

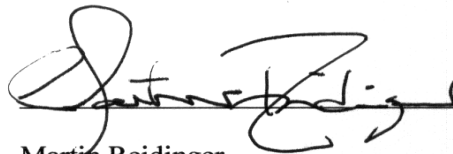
who have undertaken the offending actions. These allegations are incomprehensible, and even if this otherwise stated a claim it would be barred by judicial immunity. With respect to the claims asserted against the other defendants, the Plaintiff's allegations are similarly incomprehensible and fail to set forth any cognizable claims over which this Court has jurisdiction.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Plaintiff's Amended Application to Proceed Without Prepayment of Fees and Affidavit, filed on January 5, 2009 [Doc. 4] is **ALLOWED**, and the Clerk shall file this matter as a civil matter without the service of process.

IT IS FURTHER ORDERED that this case is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS SO ORDERED.

Signed: January 14, 2009


Martin Reidinger
United States District Judge

